

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADJUSTACAM LLC,

Plaintiff,

v.

AMAZON.COM, INC.; AUDITEK CORPORATION; BALTIC LATVIAN UNIVERSAL ELECTRONICS, LLC D/B/A BLUE MICROPHONES, LLC D/B/A BLUE MICROPHONE; BLUE MICROPHONES, LLC; CDW CORPORATION F/K/A CDW COMPUTER CENTERS, INC; CDW, INC.; CDW, LLC; COMPUSA.COM, INC.; COBRA DIGITAL, LLC; CREATIVE TECHNOLOGY LTD.; CREATIVE LABS, INC.; DELL, INC.; DIGITAL INNOVATIONS, LLC; EASTMAN KODAK COMPANY; EZONICS CORPORATION D/B/A EZONICS CORPORATION USA D/B/A EZONICS; FRY'S ELECTRONICS, INC.; GEAR HEAD, LLC; GENERAL ELECTRIC COMPANY; HEWLETT-PACKARD COMPANY; INTCOMEX, INC.; JASCO PRODUCTS COMPANY LLC D/B/A JASCO PRODUCTS COMPANY D/B/A JASCO; JWIN ELECTRONICS CORPORATION; KLIP XTREME LLC; KMART CORPORATION; LIFEWORKS TECHNOLOGY GROUP, LLC; MACALLY PERIPHERALS, INC. D/B/A MACALLY U.S.A.; MACE GROUP, INC.; MICRO ELECTRONICS, INC. DBA MICRO CENTER; NEW COMPUSA CORPORATION; NEWEGG, INC.; NEWEGG.COM, INC.; OFFICE DEPOT, INC.; OVERSTOCK.COM, INC.; PHOEBE MICRO INC.; PROLYNKZ, LLC; RADIOSHACK CORPORATION; ROSEWILL INC.; SEARS BRANDS, LLC; SEARS HOLDINGS CORPORATION D/B/A

CIVIL ACTION NO. 6:10 – CV –  
00329 -- LED

SEARS; SEARS, ROEBUCK AND COMPANY; SAKAR INTERNATIONAL, INC.; SAKAR, INC.; SDI TECHNOLOGIES, INC.; SOFTWARE BROKERS OF AMERICA INC. DBA INTCOMEX CORPORATION D/B/A INTCOMEX; SYSTEMAX, INC. D/B/A COMPUSA; TARGET CORP.; TIGERDIRECT, INC.; TRIPPE MANUFACTURING COMPANY D/B/A TRIPP LITE; AND WAL-MART STORES, INC.; BEST BUY CO. INC. D/B/A BEST BUY D/B/A ROCKETFISH; BEST BUY STORES, LP; BESTBUY.COM, LLC; CONN'S, INC. D/B/A CONN'S; J&R ELECTONICS, INC. D/B/A J&R; KOHL'S CORPORATION D/B/A KOHL'S; KOHL'S ILLINOIS, INC.; SOLD YEAR CO. LTD. AND WALGREEN CO. D/B/A WALGREENS,

Defendants.

**AMENDED ANSWER OF THE DEFENDANT, GEAR HEAD, LLC  
AND DEMAND FOR TRIAL BY JURY**

The defendant, Gear Head, LLC ("Gear Head"), answers the first amended complaint of the plaintiff, AdjustaCam LLC ("AdjustaCam") as follows:

**PARTIES**

1. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the First Amended Complaint.
2. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 2 of the First Amended Complaint.
3. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the First Amended Complaint.

4. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the First Amended Complaint.

5. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 5 of the First Amended Complaint.

6. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 6 of the First Amended Complaint.

7. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 7 of the First Amended Complaint.

8. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the First Amended Complaint.

9. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 9 of the First Amended Complaint.

10. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the First Amended Complaint.

11. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 11 of the First Amended Complaint.

12. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the First Amended Complaint.

13. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 13 of the First Amended Complaint.

14. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 14 of the First Amended Complaint.

15. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the First Amended Complaint.

16. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 16 of the First Amended Complaint.

17. Gear Head admits the allegations contained in Paragraph 17 of the First Amended Complaint.

18. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 18 of the First Amended Complaint.

19. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 19 of the First Amended Complaint.

20. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 20 of the First Amended Complaint.

21. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 21 of the First Amended Complaint.

22. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 22 of the First Amended Complaint.

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24. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 24 of the First Amended Complaint.

25. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 25 of the First Amended Complaint.

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31. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 31 of the First Amended Complaint.

32. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 32 of the First Amended Complaint.

33. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 33 of the First Amended Complaint.

34. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 34 of the First Amended Complaint.

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56. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 56 of the First Amended Complaint.

57. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 57 of the First Amended Complaint.

#### **JURISDICTION AND VENUE**

58. Gear Head does not contest subject-matter or personal jurisdiction. As to the remaining allegations, Paragraph 58 makes legal conclusions to which Gear Head is not

obligated to respond. To the extent Paragraph 58 makes any factual assertions, the allegations are denied.

59. Gear Head does not contest venue. As to the remaining allegations, Paragraph 59 makes legal conclusions to which Gear Head is not obligated to respond. To the extent Paragraph 59 makes any factual assertions, the allegations are denied.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 5,855,343**

60. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 60 of the First Amended Complaint.

61. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 61 of the First Amended Complaint.

62. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 62 of the First Amended Complaint.

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106. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 106 of the First Amended Complaint.

107. Gear Head denies the allegations contained in Paragraph 107 of the First Amended Complaint.

108. Gear Head denies the allegations contained in Paragraph 108 of the First Amended Complaint.

109. Gear Head denies the allegations contained in Paragraph 109 of the First Amended Complaint.

110. Gear Head denies the allegations contained in Paragraph 110 of the First Amended Complaint.

111. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 111 of the First Amended Complaint.

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220. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 220 of the First Amended Complaint.

221. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 221 of the First Amended Complaint.

222. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 222 of the First Amended Complaint.

223. Gear Head denies that Gear Head has damaged AdjustaCam or that Gear Head is liable to AdjustaCam for any amount.

224. Gear Head states that AdjustaCam's right to discovery is governed by the rules of civil procedure. Gear Head denies that it infringes the '343 patent and denies that any infringement was or is willful and reckless.

225. Paragraph 225 of the First Amended Complaint purports to describe a procedural matter to which a response is not required.

226. Gear Head denies the allegations contained in Paragraph 226 to the extent that it pertains to Gear Head.

WHEREFORE, Gear Head respectfully requests that this matter be dismissed against it and that it be awarded costs, including reasonable attorney's fees incurred in defending this matter.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE / FAILURE TO STATE A CLAIM**

AdjustaCam fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE / INVALIDITY**

Upon information and belief, the '343 patent and all claims contained within the patent are invalid for failure to satisfy the requirements of patentability under 35 U.S.C., including but not limited to §§ 101, 102, 103, and 112.

**THIRD AFFIRMATIVE DEFENSE / NON-INFRINGEMENT**

Gear Head has not infringed and does not infringe, induce infringement or contributorily infringe any claim of the '343 patent either literally or under the doctrine of equivalents.

**FOURTH AFFIRMATIVE DEFENSE / PATENT MARKING**

AdjustaCam is not entitled to any damages for alleged infringement because its failure to comply with the marking requirements of 35 U.S.C. § 287 and/or its failure to otherwise give notice that Gear Head allegedly infringed the '343 patent.

**FIFTH AFFIRMATIVE DEFENSE / EQUITABLE DEFENSES**

AdjustaCam's claims are barred by the equitable doctrines of laches, unclean hands, estoppel and/or a waiver.

**SIXTH AFFIRMATIVE DEFENSE / UNAVAILABILITY OF INJUNCTIVE RELIEF**

AdjustaCam is not entitled to injunctive relief because any injury is not immediate and irreparable; AdjustaCam has an adequate remedy at law; the balance of hardships favors no injunction; and the public interest is best served by no injunction.

**SEVENTH AFFIRMATIVE DEFENSE / RESERVATION OF RIGHTS**

Gear Head reserves all affirmative defenses under Rule 8C of the Federal Rules of Civil Procedure, the Patent Laws of the United States or any other defenses at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

**GEAR HEAD DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.**

Dated: September 24, 2010

Respectfully submitted by:

/s/ Herbert J. Hammond  
Herbert J. Hammond  
Attorney-In-Charge  
State Bar No. 08858500  
Vishal Patel  
State Bar No. 24065885

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ATTORNEYS FOR DEFENDANT  
GEAR HEAD, LLC

**Certificate of Service**

The undersigned certifies that the foregoing document was filed electronically on the 24th day of September, 2010 in compliance with Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service and all other counsel by regular mail.

/s/ Herbert J. Hammond  
Herbert J. Hammond

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